

Missouri Medical Malpractice Joint Underwriting Association

Minutes for the Meeting of March 25, 2004

Location: Room 470 of the Governor's Office Building
Jefferson City, Missouri

Time: 10:00 a.m. to approximately 12:30 p.m.

Attending: Bill Turley, Chairman [Shelter Insurance Companies/NAII]*
(Board) Don Ainsworth [Safety National Casualty Corp/the Alliance]
Paul Blume [AIG/Unaffiliated Companies]
Dave Monaghan [American Family Insurance/NAII]
Patty Williamson [Uhlemeyer Services Inc./AIA]

(MDI Staff) Kevin Jones, General Counsel
Susan Schulte, Chief, Property & Casualty Section
Mark Doerner, Senior Counsel, P&C Section

(Audience) Jim Vaccarino, Marsh
Jean-Paul Rebillard, Marsh
Sheryl Manger, Marsh
Mike Granacher, Marsh
Andrew Teigen, Marsh
Fred Brown, Missouri State Medical Association
Keith Wenzel, Hendren & Andrae

[Prior to the meeting, the Department of Insurance staff members in attendance monitored the teleconference hook up to the meeting room. At 10:07, after no one had come on the telephone line, the staff hung up the telephone. The staff did so with the understanding that the members of the Board who were not present were otherwise accounted for and none of them (or any other persons) had indicated they would take advantage of the teleconference access option.]

Thereafter, at approximately 10:10 a.m., the meeting was called to order by Chairman Turley, who asked the members of the audience members to introduce themselves. He

* Material in brackets following the names of Board members indicate the insurance companies they work for and then the insurance industry trade groups which they are representing under Section 383.175, RSMo.

then began with the first major order of business facing the Board, which was the adoption of a Plan of Operations.

Before moving to adopt the most recent version of the Plan (dated 3/22/04), the Chairman indicated he was having second thoughts about the provisions of Section 21 of the Plan, dealing with the right of aggrieved persons to appeal the decisions of the JUA. After discussing the language of Section 383.190, RSMo, which provides the statutory basis for such appeal rights, the Board members generally agreed that under the statute, appeals could only be made on those matters which were specifically permitted under the Plan. The Department's staff offered the opinion that the language of the Plan then before the Board essentially allowed any decisions of the JUA to be appealed. While the Board members agreed with the Chairman that this wording was too broad and might require a substantial amount of the Board's time (to deal with complaints, say, about the cost of coverage through the JUA), the Board members were also hesitant to preclude appeals before they had any first-hand experience overseeing the JUA. The Chairman asked if anyone in the audience had any experience with appeal rights in JUAs from other states. Jim Vaccarino of Marsh said they were very rare, and that generally the plans he was familiar with only allowed appeals for "discretionary" decisions of the JUA Board or the JUA service provider, plus any decisions that were in violation of a "non-discretionary" written "rule" of a plan.

After additional discussion, the Department's staff suggested adding the following underlined language to the provision in question:

Any applicant for insurance coverage, any person insured by the Association or their representatives, or any affected insurer or producer aggrieved with respect to any ruling, action, or decision of the Association, its staff, any committee thereof or any servicing companies hired by the Board, regarding matters within the discretion of such persons or entities under the relevant provisions of this Plan or the manuals of the JUA, or any other matters agreed to specifically by the Board after a formal vote, shall submit the grievance in writing to the Board for its review.

The Department staff explained that the notion behind the additional language would be to allow aggrieved persons to appeal discretionary decisions of the Board, its staff or any servicing companies, *plus* any other matters the Board agreed to review after a vote, the latter point permitting the Board the flexibility to hear types of appeals in the future without requiring the Board to enumerate those types at the outset, before the JUA's operations have even commenced. The Board voted to have the suggested language added to the Plan.

Dave Monaghan brought up the issue of the written comments made by the Reinsurance Association of America, which argued that the Board should not pursue a reinsurance option for the JUA because reinsurance is readily available for medical malpractice insurance in the open market. After some analysis, it was decided that the

RAA letter did not suggest specific changes to the Plan of Operations, and as such, their comments were not germane to the immediate discussion.

Thereafter, the Chairman moved that the Plan of Operations, with language on appeal rights modified as suggested by the Department's staff, be approved. The motion was seconded and carried with no opposition.

Next, the Board took up and approved the Minutes to the February 24th meeting of the Board. After this approval, the Department's staff pointed out that the minutes of the Board's meetings were being posted by the Department on its web site. The staff suggested that, if any outsider wanted to have any Board-approved Minutes revised, that they should submit a written request to the Board, and then the Board could vote on whether to approve the suggested change. If the Board agreed to make a change, the modified Minutes would show an asterisk and footnote, explaining the reason for the modification. The Board members agreed to this procedure.

Don Ainsworth brought up the issue of the Board's policy on dealing with the media. He suggested encouraging the press to attend the Board's meetings and read its approved documents. After some discussion, it was agreed that this approach might not satisfy every reporter. It was decided that media inquiries would be directed to the Chairman, who would answer on behalf of the Board, and that Kevin Jones, the Department's General Counsel, would be the Chairman's contact on technical or legal questions.

Following this discussion, the Minutes of the March 11th meeting were taken up and approved. In a related matter, it was pointed out that the day's meeting lacked a formal written agenda. The Department's staff indicated the main issues to be taken up by the Board (the Plan of Operations and selecting servicing companies) had been posted on the meeting announcement on the Department's web site.

Next, the Board took up the matter of selecting a servicing company or companies. One issue was whether to continue to pursue the "reinsurance option." Audience member Jim Vaccarino of Marsh cautioned the Board to be very careful in the reinsurance environment, because it is essential that the JUA have some control over any claims it is reinsuring; otherwise, claims cost can get out of control. States such as Pennsylvania and South Carolina are examples of reinsurance operations that got into trouble. The Chairman suggested that the Board's immediate focus should be to begin a "primary insurance" operation through the JUA, with the issue of providing reinsurance left for future consideration. The other Board members present agreed with that assessment.

The Board then discussed the issue of a primary servicing company. The Board members had received the various submissions made to the Department via e-mail prior to the meeting. Having reviewed these materials, the Chairman moved to appoint Marsh as the primary servicing company, pending the completion of a "due diligence" review. At that point, at the request of the members, the room was cleared of audience members. The Board members and staff then discussed the Chairman's motion. They also discussed the logic of selecting an actuary independent of the primary servicing company. The

Chairman then asked the Board members whether any of them wanted to nominate any other entities for the position of the primary serving company. No other nominations were offered. The Chairman's motion to select Marsh was seconded and passed unanimously by the Board members present.

The audience members were invited back in and the representatives from Marsh were told they had been selected pending the successful outcome of the Board's due diligence review. The Board members then asked the Marsh representatives to contact two of the actuarial servicing company submitters, Milliman USA and Tillighast, about their Missouri-based actuarial operations to see which had the best "Missouri" experience. Marsh agreed to do so.

There followed an extended discussion of whether the JUA should initially offer "occurrence" or "claims-made" policies. The representative of Marsh indicated that there would be an interest in the provider community for "occurrence" policies. Kevin Jones of the Department pointed out that testimony at the Department's hearing regarding whether to establish a JUA had indicated a desire for occurrence policies, since they had virtually disappeared from the marketplace. Therefore, it was decided that the JUA would initially offer occurrence policies, with the issue of whether it could and should offer claims-made policies left until later. On a related matter, Mr. Vaccarino agreed with the Chairman that, in regards to "occurrence" policies, "tail" and "nose" coverages would be "incidental coverages" under subdivision 3(1) of Section 383.155, RSMo.

The Board next moved to the issue of hiring an attorney. A motion to use former Insurance Director Keith Wenzel was made, seconded and carried unanimously. Keith said he would check with his law firm to determine if any conflicts of interest prevented him from serving as the Board's attorney. He would also check to see whether the partners of his firm would be concerned about the Board's inability to make any immediate payment for services. The Board indicated that, if he could function as the Board's attorney, his first job would be to conduct the "due diligence" review of Marsh.

Don Ainsworth then suggested that the board consider whether to make recommendations to the General Assembly on ways to help improve the medical malpractice environment in Missouri that went beyond the JUA, such as improving the level of professional health care provider discipline for instances of inadequate medical care and safety/loss control. In his opinion, we should be working toward solving the overall problem while also administering the JUA. The Department's staff suggested that, to the extent the JUA ended up insuring the doctors who could not find coverage elsewhere, the JUA might have that opportunity.

At around 12:30 p.m., the meeting was adjourned.